

By: Smith of Harris

H.B. No. 2694

A BILL TO BE ENTITLED

AN ACT

relating to the continuation and functions of the Texas Commission on Environmental Quality and abolishing the On-site Wastewater Treatment Research Council.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. GENERAL PROVISIONS

SECTION 1.01. The heading to Chapter 5, Water Code, is amended to read as follows:

CHAPTER 5. TEXAS [~~NATURAL RESOURCE CONSERVATION~~] COMMISSION ON ENVIRONMENTAL QUALITY

SECTION 1.02. Section 5.014, Water Code, is amended to read as follows:

Sec. 5.014. SUNSET PROVISION. The Texas [~~Natural Resource Conservation~~] Commission on Environmental Quality is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this chapter expires September 1, 2023 [~~2011~~].

SECTION 1.03. Subchapter C, Chapter 5, Water Code, is amended by adding Section 5.061 to read as follows:

Sec. 5.061. PROHIBITION ON ACCEPTING CAMPAIGN CONTRIBUTIONS. A member of the commission may not accept a contribution to a campaign for election to an elected office. If a member of the commission accepts a campaign contribution, the person is considered to have resigned from the office and the office

1 immediately becomes vacant. The vacancy shall be filled in the
2 manner provided by law.

3 SECTION 1.04. Subchapter D, Chapter 5, Water Code, is
4 amended by adding Section 5.1031 to read as follows:

5 Sec. 5.1031. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE
6 RESOLUTION. (a) The commission shall develop and implement a
7 policy to encourage the use of:

8 (1) negotiated rulemaking procedures under Chapter
9 2008, Government Code, for the adoption of commission rules; and

10 (2) appropriate alternative dispute resolution
11 procedures under Chapter 2009, Government Code, to assist in the
12 resolution of internal and external disputes under the commission's
13 jurisdiction.

14 (b) The commission's procedures relating to alternative
15 dispute resolution must conform, to the extent possible, to any
16 model guidelines issued by the State Office of Administrative
17 Hearings for the use of alternative dispute resolution by state
18 agencies.

19 (c) The commission shall:

20 (1) coordinate the implementation of the policy
21 adopted under Subsection (a);

22 (2) provide training as needed to implement the
23 procedures for negotiated rulemaking or alternative dispute
24 resolution; and

25 (3) collect data concerning the effectiveness of those
26 procedures.

27 SECTION 1.05. Section 5.2291(b), Water Code, is amended to

1 read as follows:

2 (b) Except as provided by Section 5.2292, the [~~The~~]
3 procurement of a contract for scientific and technical
4 environmental services shall be conducted under the procedures for
5 professional services selection provided in Subchapter A, Chapter
6 2254, Government Code.

7 SECTION 1.06. Subchapter F, Chapter 5, Water Code, is
8 amended by adding Section 5.2292 to read as follows:

9 Sec. 5.2292. CONTRACTS FOR SERVICES UNDER PETROLEUM STORAGE
10 TANK STATE-LEAD PROGRAM. (a) The executive director may directly
11 award a contract for scientific and technical environmental
12 services to a person if:

13 (1) the contract is for the performance of services
14 related to the remediation of a site that has been placed in the
15 state-lead program under Section 26.3573(r-1);

16 (2) the person has registered to perform corrective
17 action under Section 26.364;

18 (3) the person is eligible to receive a contract award
19 from the state;

20 (4) the person was performing related work at the site
21 on or before July 1, 2011; and

22 (5) the contract includes all contract provisions
23 required for state contracts.

24 (b) Notwithstanding Section 2254.004, Government Code, the
25 executive director may directly award a contract for engineering
26 services to a person if:

27 (1) the contract is for the performance of services

1 related to the remediation of a site that has been placed in the
2 state-lead program under Section 26.3573(r-1);

3 (2) the person is licensed under Chapter 1001,
4 Occupations Code;

5 (3) the person has registered to perform corrective
6 action under Section 26.364;

7 (4) the person is eligible to receive a contract award
8 from the state;

9 (5) the person was performing related work at the site
10 on or before July 1, 2011; and

11 (6) the contract includes all contract provisions
12 required for state contracts.

13 (c) Nothing in Subsection (a) or (b) requires the executive
14 director to make an award at a site or prevents the executive
15 director from negotiating additional contract terms, including
16 qualifications.

17 SECTION 1.07. Section 12.052, Water Code, is amended by
18 amending Subsection (a) and adding Subsections (b-1) and (e-1) to
19 read as follows:

20 (a) The commission shall make and enforce rules and orders
21 and shall perform all other acts necessary to provide for the safe
22 construction, maintenance, repair, and removal of dams located in
23 this state. In performing the commission's duties under this
24 subsection, the commission shall identify and focus on the most
25 hazardous dams in the state.

26 (b-1) The commission may enter into an agreement with an
27 owner of a dam who is required to reevaluate the adequacy of an

1 existing dam or spillway. The agreement may include timelines to
2 achieve compliance with the commission's design criteria and may
3 authorize deferral of compliance with the criteria, as appropriate.

4 (e-1) The commission shall exempt dams that impound 1,000
5 acre-feet or less from meeting requirements related to dam safety.

6 ARTICLE 2. TRANSFER OF CERTAIN DUTIES TO THE RAILROAD COMMISSION

7 SECTION 2.01. Section 91.011, Natural Resources Code, is
8 amended to read as follows:

9 Sec. 91.011. CASING. (a) Before drilling into the oil or
10 gas bearing rock, the owner or operator of a well being drilled for
11 oil or gas shall encase the well with good and sufficient wrought
12 iron or steel casing or with any other material that meets standards
13 adopted by the commission, particularly where wells could be
14 subjected to corrosive elements or high pressures and temperatures,
15 in a manner and to a depth that will exclude surface or fresh water
16 from the lower part of the well from penetrating the oil or gas
17 bearing rock, and if the well is drilled through the first into the
18 lower oil or gas bearing rock, the well shall be cased in a manner
19 and to a depth that will exclude fresh water above the last oil or
20 gas bearing rock penetrated.

21 (b) The commission shall adopt rules regarding the depth of
22 well casings necessary to meet the requirements of this section.

23 SECTION 2.02. Subchapter B, Chapter 91, Natural Resources
24 Code, is amended by adding Section 91.0115 to read as follows:

25 Sec. 91.0115. CASING; LETTER OF DETERMINATION. (a) The
26 commission shall issue, on request from an applicant for a permit
27 for a well to be drilled into oil or gas bearing rock, a letter of

1 determination stating the total depth of surface casing required
2 for the well by Section 91.011.

3 (b) The commission may charge a fee in an amount to be
4 determined by the commission for a letter of determination.

5 (c) The commission shall charge a fee not to exceed \$75, in
6 addition to the fee required by Subsection (b), for processing a
7 request to expedite a letter of determination. Money collected
8 under this subsection may be used to study and evaluate electronic
9 access to geologic data and surface casing depths under Section
10 91.020.

11 SECTION 2.03. Subchapter B, Chapter 91, Natural Resources
12 Code, is amended by adding Section 91.020 to read as follows:

13 Sec. 91.020. ELECTRONIC GEOLOGIC DATA. The commission
14 shall work cooperatively with other appropriate state agencies to
15 study and evaluate electronic access to geologic data and surface
16 casing depths necessary to protect usable groundwater in this
17 state.

18 SECTION 2.04. Subchapter D, Chapter 91, Natural Resources
19 Code, is amended by adding Section 91.1015 to read as follows:

20 Sec. 91.1015. GROUNDWATER PROTECTION REQUIREMENTS. The
21 commission shall adopt rules to establish groundwater protection
22 requirements for operations that are within the jurisdiction of the
23 commission, including requirements relating to the depth of surface
24 casing for wells.

25 SECTION 2.05. Section 27.033, Water Code, is amended to
26 read as follows:

27 Sec. 27.033. LETTER OF DETERMINATION [~~FROM EXECUTIVE~~

1 ~~DIRECTOR~~]. A person making application to the railroad commission
2 for a permit under this chapter shall submit with the application a
3 letter of determination from the railroad commission [~~from the~~
4 ~~executive director~~] stating that drilling and using the disposal
5 well and injecting oil and gas waste into the subsurface stratum
6 will not endanger the freshwater strata in that area and that the
7 formation or stratum to be used for the disposal is not freshwater
8 sand.

9 SECTION 2.06. Section 27.046, Water Code, is amended to
10 read as follows:

11 Sec. 27.046. LETTER OF DETERMINATION [~~FROM EXECUTIVE~~
12 ~~DIRECTOR~~]. (a) The railroad commission may not issue a permit
13 under rules adopted under this subchapter until the railroad
14 commission issues to the applicant for the permit [~~provides to the~~
15 ~~railroad commission~~] a letter of determination [~~from the executive~~
16 ~~director~~] stating that drilling and operating the anthropogenic
17 carbon dioxide injection well for geologic storage or operating the
18 geologic storage facility will not injure any freshwater strata in
19 that area and that the formation or stratum to be used for the
20 geologic storage facility is not freshwater sand.

21 (b) To make the determination required by Subsection (a),
22 the railroad commission [~~executive director~~] shall review:

- 23 (1) the area of review and corrective action plans;
24 (2) any subsurface monitoring plans required during
25 injection or post injection;
26 (3) any postinjection site care plans; and
27 (4) any other elements of the application reasonably

1 required in order for the railroad commission [~~executive director~~]
2 to make the determination required by Subsection (a).

3 (c) The railroad commission shall adopt rules to implement
4 and administer this section.

5 SECTION 2.07. Section 5.701(r), Water Code, is repealed.

6 SECTION 2.08. (a) The Railroad Commission of Texas shall
7 adopt rules to implement the changes in law made by this article not
8 later than March 1, 2012.

9 (b) A rule, form, policy, or procedure of the Texas
10 Commission on Environmental Quality related to the changes in law
11 made by this article continues in effect as a rule, form, policy, or
12 procedure of the Railroad Commission of Texas and remains in effect
13 until amended or replaced by that agency.

14 ARTICLE 3. PUBLIC INTEREST

15 SECTION 3.01. Subchapter F, Chapter 5, Water Code, is
16 amended by adding Section 5.239 to read as follows:

17 Sec. 5.239. PUBLIC EDUCATION AND ASSISTANCE. (a) The
18 executive director shall ensure that the agency is responsive to
19 environmental and citizens' concerns, including environmental
20 quality and consumer protection.

21 (b) The executive director shall develop and implement a
22 program to:

23 (1) provide a centralized point for the public to
24 access information about the commission and to learn about matters
25 regulated by the commission;

26 (2) identify and assess the concerns of the public in
27 regard to matters regulated by the commission; and

1 (3) respond to the concerns identified by the program.

2 SECTION 3.02. Section 5.271, Water Code, is amended to read
3 as follows:

4 Sec. 5.271. CREATION AND GENERAL RESPONSIBILITY OF THE
5 OFFICE OF PUBLIC INTEREST COUNSEL. The office of public interest
6 counsel is created to ensure that the commission promotes the
7 public's interest [~~and is responsive to environmental and citizens'~~
8 ~~concerns including environmental quality and consumer protection~~].
9 The primary duty of the office is to represent the public interest
10 as a party to matters before the commission.

11 SECTION 3.03. Subchapter G, Chapter 5, Water Code, is
12 amended by adding Section 5.2725 to read as follows:

13 Sec. 5.2725. ANNUAL REPORT; PERFORMANCE MEASURES. (a) The
14 office of public interest counsel shall report to the commission
15 each year in a public meeting held on a date determined by the
16 commission to be timely for the commission to include the reported
17 information in the commission's reports under Sections 5.178(a) and
18 (b) and in the commission's biennial legislative appropriations
19 requests as appropriate:

20 (1) an evaluation of the office's performance in
21 representing the public interest in the preceding year;

22 (2) an assessment of the budget needs of the office,
23 including the need to contract for outside expertise; and

24 (3) any legislative or regulatory changes recommended
25 under Section 5.273.

26 (b) The commission and the office of public interest counsel
27 shall work cooperatively to identify performance measures for the

1 office.

2 SECTION 3.04. Subchapter G, Chapter 5, Water Code, is
3 amended by adding Section 5.276 to read as follows:

4 Sec. 5.276. FACTORS FOR PUBLIC INTEREST REPRESENTATION.

5 (a) The commission by rule, after consideration of recommendations
6 from the office of public interest counsel, shall establish factors
7 the public interest counsel must consider before the public
8 interest counsel decides to represent the public interest as a
9 party to a commission proceeding.

10 (b) Rules adopted under this section must include:

11 (1) factors to determine the nature and extent of the
12 public interest; and

13 (2) factors to consider in prioritizing the workload
14 of the office of public interest counsel.

15 ARTICLE 4. COMPLIANCE AND ENFORCEMENT

16 SECTION 4.01. Section 5.751, Water Code, is amended to read
17 as follows:

18 Sec. 5.751. APPLICABILITY. This subchapter applies to
19 programs under the jurisdiction of the commission under Chapters
20 26, ~~and~~ 27, and 32 of this code and Chapters 361, 375, 382, and
21 401, Health and Safety Code. It does not apply to occupational
22 licensing programs under the jurisdiction of the commission.

23 SECTION 4.02. Section 5.752(1), Water Code, is amended to
24 read as follows:

25 (1) "Applicable legal requirement" means an
26 environmental law, regulation, permit, order, consent[~~7~~] decree,
27 or other requirement.

1 SECTION 4.03. The heading to Section 5.753, Water Code, is
2 amended to read as follows:

3 Sec. 5.753. STANDARDS [~~STANDARD~~] FOR EVALUATING AND USING
4 COMPLIANCE HISTORY.

5 SECTION 4.04. Section 5.753, Water Code, is amended by
6 amending Subsections (a), (b), and (d) and adding Subsection (d-1)
7 to read as follows:

8 (a) Consistent with other law and the requirements
9 necessary to maintain federal program authorization, the
10 commission by rule shall develop standards [~~a uniform standard~~] for
11 evaluating and using compliance history that ensure consistency.
12 In developing the standards, the commission may account for
13 differences among regulated entities.

14 (b) The components of compliance history must include:

15 (1) enforcement orders, court judgments, [~~consent~~
16 ~~decrees,~~] and criminal convictions of this state [~~and the federal~~
17 ~~government~~] relating to compliance with applicable legal
18 requirements under the jurisdiction of the commission [~~or the~~
19 ~~United States Environmental Protection Agency~~];

20 (2) notwithstanding any other provision of this code,
21 orders issued under Section 7.070;

22 (3) to the extent readily available to the commission,
23 enforcement orders, court judgments, consent decrees, and criminal
24 convictions relating to violations of environmental rules [~~laws~~] of
25 the United States Environmental Protection Agency [~~other states~~];

26 and

27 (4) changes in ownership.

1 (d) If the commission includes a notice of violation in a
2 compliance history, the listing must be preceded by the following
3 statement prominently displayed: "A notice of violation represents
4 a written allegation of a violation of a specific regulatory
5 requirement from the commission to a regulated entity. A notice of
6 violation is not a final enforcement action nor proof that a
7 violation has actually occurred." [~~The set of components shall~~
8 ~~include notices of violations.~~] A notice of violation
9 administratively determined to be without merit may [~~shall~~] not be
10 included in a compliance history. A notice of violation that is
11 included in a compliance history shall be removed from the
12 compliance history if the commission subsequently determines the
13 notice of violation to be without merit.

14 (d-1) For purposes of listing compliance history, the
15 commission may not include as a notice of violation information
16 received by the commission as required by Title V of the federal
17 Clean Air Act (42 U.S.C. Section 7661 et seq.) unless the commission
18 issues a written notice of violation. Final enforcement orders or
19 judgments resulting from self-reported Title V deviations or
20 violations may be considered as compliance history components for
21 purposes of determining compliance history.

22 SECTION 4.05. Section 5.754, Water Code, is amended by
23 amending Subsections (a), (b), (c), (d), (e), (g), and (h) and
24 adding Subsection (e-1) to read as follows:

25 (a) The commission by rule shall establish a set of
26 standards for the classification of a person's compliance history
27 as a means of evaluating compliance history. The commission may

1 consider the person's classification when using compliance history
2 under Subsection (e).

3 (b) Rules adopted under Subsection (a):

4 (1) [~~this section~~] must, at a minimum, provide for three
5 classifications of compliance history in a manner adequate to
6 distinguish among:

7 (A) unsatisfactory [~~(1) poor~~] performers, or
8 regulated entities that in the commission's judgment perform below
9 minimal acceptable performance standards established by the
10 commission [~~average~~];

11 (B) satisfactory [~~(2) average~~] performers, or
12 regulated entities that generally comply with environmental
13 regulations; and

14 (C) [~~(3)~~] high performers, or regulated entities
15 that have an above-satisfactory [~~above-average~~] compliance record;

16 (2) may establish a category of unclassified
17 performers, or regulated entities for which the commission does not
18 have adequate compliance information about the site; and

19 (3) must take into account both positive and negative
20 factors related to the operation, size, and complexity of the site,
21 including whether the site is subject to Title V of the federal
22 Clean Air Act (42 U.S.C. Section 7661 et seq.).

23 (c) In classifying a person's compliance history, the
24 commission shall:

25 (1) determine whether a violation of an applicable
26 legal requirement is of major, moderate, or minor significance;

27 (2) establish criteria for classifying a repeat

1 violator, giving consideration to the size [~~number~~] and complexity
2 of the site at which the violations occurred, and limiting
3 consideration to violations of the same nature and the same
4 environmental media that occurred in the preceding five years
5 [~~facilities owned or operated by the person~~]; and

6 (3) consider:

7 (A) the significance of the violation and whether
8 the person is a repeat violator;

9 (B) the size and complexity of the site,
10 including whether the site is subject to Title V of the federal
11 Clean Air Act (42 U.S.C. Section 7661 et seq.); and

12 (C) the potential for a violation at the site
13 that is attributable to the nature and complexity of the site.

14 (d) The commission by rule may require [~~shall establish~~
15 ~~methods of assessing the compliance history of regulated entities~~
16 ~~for which it does not have adequate compliance information. The~~
17 ~~methods may include requiring~~] a compliance inspection to determine
18 an entity's eligibility for participation in a program that
19 requires a high level of compliance.

20 (e) The commission by rule shall provide for the use of
21 compliance history [~~classifications~~] in commission decisions
22 regarding:

23 (1) the issuance, renewal, amendment, modification,
24 denial, suspension, or revocation of a permit;

25 (2) enforcement;

26 (3) the use of announced inspections; and

27 (4) participation in innovative programs.

1 (e-1) The amount of the penalty enhancement or escalation
2 attributed to compliance history may not exceed 100 percent of the
3 base penalty for an individual violation as determined by the
4 commission's penalty policy. Notices of violation may not be used
5 individually for penalty enhancement or escalation.

6 (g) Rules adopted under Subsection (e) for the use of
7 compliance history shall provide for additional oversight of, and
8 review of applications regarding, facilities owned or operated by a
9 person whose compliance performance is classified as
10 unsatisfactory according to commission standards [~~in the lowest~~
11 ~~classification developed under this section~~].

12 (h) The commission by rule shall, at a minimum, prohibit a
13 person whose compliance history is classified as unsatisfactory
14 according to commission standards [~~in the lowest classification~~
15 ~~developed under this section~~] from[+]

16 [~~(1) receiving an announced inspection; and~~

17 [~~(2)~~] obtaining or renewing a flexible permit under
18 the program administered by the commission under Chapter 382,
19 Health and Safety Code, or participating in the regulatory
20 flexibility program administered by the commission under Section
21 5.758.

22 SECTION 4.06. Section 5.755(b), Water Code, is amended to
23 read as follows:

24 (b) The strategically directed regulatory structure shall
25 offer incentives based on:

26 (1) a person's compliance history [~~classification~~];

27 and

1 (2) any voluntary measures undertaken by the person to
2 improve environmental quality.

3 SECTION 4.07. Section 5.756, Water Code, is amended by
4 adding Subsection (e) to read as follows:

5 (e) Before compliance performance information about a site
6 may be placed on the Internet under this subchapter, the
7 information must be evaluated through a quality assurance and
8 control procedure, including a 30-day period for the owner or
9 operator of the site to review and comment on the information.

10 SECTION 4.08. Sections 5.758(a), (b), (d), and (h), Water
11 Code, are amended to read as follows:

12 (a) The commission by order may exempt an applicant from a
13 requirement of a statute or commission rule regarding the control
14 or abatement of pollution if the applicant proposes to control or
15 abate pollution by an alternative method or by applying an
16 alternative standard that is:

17 (1) as ~~[more]~~ protective of the environment and the
18 public health as ~~[than]~~ the method or standard prescribed by the
19 statute or commission rule that would otherwise apply; and

20 (2) not inconsistent with federal law.

21 (b) The commission may not exempt an applicant under this
22 section unless the applicant can present to the commission
23 ~~[documented]~~ evidence that the alternative the applicant proposes
24 is as protective of the environment and the public health as the
25 method or standard prescribed by the statute or commission rule
26 that would otherwise apply ~~[of benefits to environmental quality~~
27 ~~that will result from the project the applicant proposes]~~.

1 (d) The commission's order must provide a [~~specific~~]
2 description of the alternative method or standard and condition the
3 exemption on compliance with the method or standard as the order
4 prescribes.

5 (h) In implementing the program of regulatory flexibility
6 authorized by this section, the commission shall:

7 (1) promote [~~market~~] the program to businesses in the
8 state through all available appropriate media;

9 (2) endorse alternative methods that will clearly
10 benefit the environment and impose the least onerous restrictions
11 on business;

12 (3) fix and enforce environmental standards, allowing
13 businesses flexibility in meeting the standards in a manner that
14 clearly enhances environmental outcomes; and

15 (4) work to achieve consistent and predictable results
16 for the regulated community and shorter waits for permit issuance.

17 SECTION 4.09. Subchapter A, Chapter 7, Water Code, is
18 amended by adding Section 7.006 to read as follows:

19 Sec. 7.006. ENFORCEMENT POLICIES. (a) The commission by
20 rule shall adopt a general enforcement policy that describes the
21 commission's approach to enforcement.

22 (b) The commission shall assess, update, and publicly adopt
23 specific enforcement policies regularly, including policies
24 regarding the calculation of penalties and deterrence to prevent
25 the economic benefit of noncompliance.

26 (c) The commission shall make the policies available to the
27 public, including by posting the policies on the commission's

1 Internet website.

2 SECTION 4.10. Sections 7.052(a) and (c), Water Code, are
3 amended to read as follows:

4 (a) The amount of the penalty for a violation of Chapter 37
5 of this code, Chapter 366, 371, or 372, Health and Safety Code, or
6 Chapter 1903, Occupations Code, may not exceed \$5,000 [~~\$2,500~~] a
7 day for each violation.

8 (c) The amount of the penalty for all other violations
9 within the jurisdiction of the commission to enforce may not exceed
10 \$25,000 [~~\$10,000~~] a day for each violation.

11 SECTION 4.11. Section 7.067, Water Code, is amended to read
12 as follows:

13 Sec. 7.067. SUPPLEMENTAL ENVIRONMENTAL PROJECTS. (a) The
14 commission may compromise, modify, or remit, with or without
15 conditions, an administrative penalty imposed under this
16 subchapter. In determining the appropriate amount of a penalty for
17 settlement of an administrative enforcement matter, the commission
18 may consider a respondent's willingness to contribute to
19 supplemental environmental projects that are approved by the
20 commission, giving preference to projects that benefit the
21 community in which the alleged violation occurred. The commission
22 may encourage the cleanup of contaminated property through the use
23 of supplemental environmental projects. The commission may approve
24 a supplemental environmental project with activities in territory
25 of the United Mexican States if the project substantially benefits
26 territory in this state in a manner described by Subsection (b).
27 Except as provided by Subsection (a-1), the [~~The~~] commission may

1 not approve a project that is necessary to bring a respondent into
2 compliance with environmental laws, that is necessary to remediate
3 environmental harm caused by the respondent's alleged violation, or
4 that the respondent has already agreed to perform under a
5 preexisting agreement with a governmental agency.

6 (a-1) The commission may approve a supplemental
7 environmental project that is necessary to bring a respondent into
8 compliance with environmental laws or that is necessary to
9 remediate environmental harm caused by the respondent's alleged
10 violation if the respondent is a local government.

11 (a-2) The commission shall develop a policy to prevent
12 regulated entities from systematically avoiding compliance through
13 the use of supplemental environmental projects under Subsection
14 (a-1), including a requirement for an assessment of:

15 (1) the respondent's financial ability to pay
16 administrative penalties;

17 (2) the ability of the respondent to remediate the
18 harm or come into compliance; and

19 (3) the need for corrective action.

20 (b) In this section:

21 (1) "Local government" means a school district,
22 county, municipality, junior college district, river authority,
23 water district or other special district, or other political
24 subdivision created under the constitution or a statute of this
25 state.

26 (2) "Supplemental [~~,"supplemental]~~ environmental
27 project" means a project that prevents pollution, reduces the

1 amount of pollutants reaching the environment, enhances the quality
2 of the environment, or contributes to public awareness of
3 environmental matters.

4 SECTION 4.12. Section 13.4151(a), Water Code, is amended to
5 read as follows:

6 (a) If a person, affiliated interest, or entity subject to
7 the jurisdiction of the commission violates this chapter or a rule
8 or order adopted under this chapter, the commission may assess a
9 penalty against that person, affiliated interest, or entity as
10 provided by this section. The penalty may be in an amount not to
11 exceed \$5,000 [~~\$500~~] a day. Each day a violation continues may be
12 considered a separate violation.

13 SECTION 4.13. Section 26.028(d), Water Code, is amended to
14 read as follows:

15 (d) Notwithstanding any other provision of this chapter,
16 the commission, at a regular meeting without the necessity of
17 holding a public hearing, may approve an application to renew or
18 amend a permit if:

19 (1) the applicant is not applying to:

20 (A) increase significantly the quantity of waste
21 authorized to be discharged; or

22 (B) change materially the pattern or place of
23 discharge;

24 (2) the activities to be authorized by the renewed or
25 amended permit will maintain or improve the quality of waste
26 authorized to be discharged;

27 (3) for NPDES permits, notice and the opportunity to

1 request a public meeting shall be given in compliance with NPDES
2 program requirements, and the commission shall consider and respond
3 to all timely received and significant public comment; and

4 (4) the commission determines that an applicant's
5 compliance history under the method for using ~~[evaluating]~~
6 compliance history developed by the commission under Section 5.754
7 raises no issues regarding the applicant's ability to comply with a
8 material term of its permit.

9 SECTION 4.14. Section 26.0281, Water Code, is amended to
10 read as follows:

11 Sec. 26.0281. CONSIDERATION OF COMPLIANCE HISTORY. In
12 considering the issuance, amendment, or renewal of a permit to
13 discharge effluent comprised primarily of sewage or municipal
14 waste, the commission shall consider the compliance history of the
15 applicant and its operator under the method for using ~~[evaluating]~~
16 compliance history developed by the commission under Section 5.754.
17 In considering an applicant's compliance history under this
18 subsection, the commission shall consider as evidence of compliance
19 information regarding the applicant's implementation of an
20 environmental management system at the facility for which the
21 permit, permit amendment, or permit renewal is sought. In this
22 section, "environmental management system" has the meaning
23 assigned by Section 5.127.

24 SECTION 4.15. Section 26.040(h), Water Code, is amended to
25 read as follows:

26 (h) Notwithstanding other provisions of this chapter, the
27 commission, after hearing, shall deny or suspend a discharger's

1 authority to discharge under a general permit if the commission
2 determines that the discharger's compliance history is classified
3 as unsatisfactory according to commission standards [~~in the lowest~~
4 ~~classification~~] under Sections 5.753 and 5.754 and rules adopted
5 and procedures developed under those sections. A hearing under this
6 subsection is not subject to Chapter 2001, Government Code.

7 SECTION 4.16. Section 26.3467, Water Code, is amended by
8 adding Subsections (d) and (e) to read as follows:

9 (d) A person may not deliver any regulated substance into an
10 underground storage tank regulated under this chapter unless the
11 underground storage tank has been issued a valid, current
12 underground storage tank registration and certificate of
13 compliance under Section 26.346. The commission may impose an
14 administrative penalty against a person who violates this
15 subsection. The commission shall adopt rules as necessary to
16 enforce this subsection.

17 (e) It is an affirmative defense to the imposition of an
18 administrative penalty for a violation of Subsection (d) that the
19 person delivering a regulated substance into an underground storage
20 tank relied on:

21 (1) a valid paper delivery certificate presented by
22 the owner or operator of the underground storage tank or displayed
23 at the facility associated with the underground storage tank;

24 (2) a temporary delivery authorization presented by
25 the owner or operator of the underground storage tank or displayed
26 at the facility associated with the underground storage tank; or

27 (3) registration and self-certification information

1 for the underground storage tank obtained from the commission's
2 Internet website not more than 30 days before the date of delivery.

3 SECTION 4.17. Section 26.351, Water Code, is amended by
4 adding Subsections (c-1) and (c-2) to read as follows:

5 (c-1) The commission may undertake corrective action to
6 remove an underground or aboveground storage tank that:

7 (1) is not in compliance with the requirements of this
8 chapter;

9 (2) is out of service;

10 (3) presents a contamination risk; and

11 (4) is owned or operated by a person who is financially
12 unable to remove the tank.

13 (c-2) The commission shall adopt rules to implement
14 Subsection (c-1), including rules regarding:

15 (1) the determination of the financial ability of the
16 tank owner or operator to remove the tank; and

17 (2) the assessment of the potential risk of
18 contamination from the site.

19 SECTION 4.18. Section 26.3573(d), Water Code, is amended to
20 read as follows:

21 (d) The commission may use the money in the petroleum
22 storage tank remediation account to pay:

23 (1) necessary expenses associated with the
24 administration of the petroleum storage tank remediation account
25 and the groundwater protection cleanup program;

26 (2) expenses associated with investigation, cleanup,
27 or corrective action measures performed in response to a release or

1 threatened release from a petroleum storage tank, whether those
2 expenses are incurred by the commission or pursuant to a contract
3 between a contractor and an eligible owner or operator as
4 authorized by this subchapter;

5 (3) subject to the conditions of Subsection (f),
6 expenses associated with investigation, cleanup, or corrective
7 action measures performed in response to a release or threatened
8 release of hydraulic fluid or spent oil from hydraulic lift systems
9 or tanks located at a vehicle service and fueling facility and used
10 as part of the operations of that facility; ~~and~~

11 (4) expenses associated with assuring compliance with
12 the commission's applicable underground or aboveground storage
13 tank administrative and technical requirements, including
14 technical assistance and support, inspections, enforcement, and
15 the provision of matching funds for grants; and

16 (5) expenses associated with investigation, cleanup,
17 or corrective action measures performed under Section 26.351(c-1).

18 SECTION 4.19. Section 26.3574, Water Code, is amended by
19 amending Subsection (b) and adding Subsection (b-1) to read as
20 follows:

21 (b) A fee is imposed on the delivery of a petroleum product
22 on withdrawal from bulk of that product as provided by this
23 subsection. Each operator of a bulk facility on withdrawal from
24 bulk of a petroleum product shall collect from the person who orders
25 the withdrawal a fee in an amount determined as follows:

26 (1) not more than \$3.125 [~~\$3.75~~] for each delivery
27 into a cargo tank having a capacity of less than 2,500 gallons [~~for~~

1 ~~the state fiscal year beginning September 1, 2007, through the~~
2 ~~state fiscal year ending August 31, 2011];~~

3 (2) not more than \$6.25 [~~\$7.50~~] for each delivery into
4 a cargo tank having a capacity of 2,500 gallons or more but less
5 than 5,000 gallons [~~for the state fiscal year beginning September~~
6 ~~1, 2007, through the state fiscal year ending August 31, 2011]~~;

7 (3) not more than \$9.37 [~~\$11.75~~] for each delivery
8 into a cargo tank having a capacity of 5,000 gallons or more but
9 less than 8,000 gallons [~~for the state fiscal year beginning~~
10 ~~September 1, 2007, through the state fiscal year ending August 31,~~
11 ~~2011]~~;

12 (4) not more than \$12.50 [~~\$15.00~~] for each delivery
13 into a cargo tank having a capacity of 8,000 gallons or more but
14 less than 10,000 gallons [~~for the state fiscal year beginning~~
15 ~~September 1, 2007, through the state fiscal year ending August 31,~~
16 ~~2011]~~; and

17 (5) not more than \$6.25 [~~\$7.50~~] for each increment of
18 5,000 gallons or any part thereof delivered into a cargo tank having
19 a capacity of 10,000 gallons or more [~~for the state fiscal year~~
20 ~~beginning September 1, 2007, through the state fiscal year ending~~
21 ~~August 31, 2011]~~.

22 (b-1) The commission by rule shall set the amount of the fee
23 in Subsection (b) in an amount not to exceed the amount necessary to
24 cover the agency's costs of administering this subchapter, as
25 indicated by the amount appropriated by the legislature from the
26 petroleum storage tank remediation account for that purpose.

27 SECTION 4.20. Section 27.025(g), Water Code, is amended to

1 read as follows:

2 (g) Notwithstanding the other provisions of this chapter,
3 the commission, after hearing, shall deny or suspend authorization
4 for the use of an injection well under a general permit if the
5 commission determines that the owner's compliance history is
6 classified as unsatisfactory according to commission standards [~~in~~
7 ~~the lowest classification~~] under Sections 5.753 and 5.754 and rules
8 adopted and procedures developed under those sections. A hearing
9 under this subsection is not subject to the requirements relating
10 to a contested case hearing under Chapter 2001, Government Code.

11 SECTION 4.21. Section 27.051(d), Water Code, is amended to
12 read as follows:

13 (d) The commission, in determining if the use or
14 installation of an injection well is in the public interest under
15 Subsection (a)(1), shall consider, but shall not be limited to the
16 consideration of:

17 (1) compliance history of the applicant and related
18 entities under the method for using [~~evaluating~~] compliance history
19 developed by the commission under Section 5.754 and in accordance
20 with the provisions of Subsection (e);

21 (2) whether there is a practical, economic, and
22 feasible alternative to an injection well reasonably available; and

23 (3) if the injection well will be used for the disposal
24 of hazardous waste, whether the applicant will maintain sufficient
25 public liability insurance for bodily injury and property damage to
26 third parties that is caused by sudden and non-sudden accidents or
27 will otherwise demonstrate financial responsibility in a manner

1 adopted by the commission in lieu of public liability insurance. A
2 liability insurance policy which satisfies the policy limits
3 required by the hazardous waste management regulations of the
4 commission for the applicant's proposed pre-injection facilities
5 shall be deemed "sufficient" under this subdivision if the policy:

6 (A) covers the injection well; and

7 (B) is issued by a company that is authorized to
8 do business and to write that kind of insurance in this state and is
9 solvent and not currently under supervision or in conservatorship
10 or receivership in this state or any other state.

11 SECTION 4.22. Section 32.101(c), Water Code, is amended to
12 read as follows:

13 (c) The commission, in determining if the use or
14 installation of a subsurface area drip dispersal system is in the
15 public interest under Subsection (a)(1), shall consider:

16 (1) compliance history of the applicant and related
17 entities under the method for using ~~[evaluating]~~ compliance history
18 developed by the commission under Section 5.754 and in accordance
19 with the provisions of Subsection (d) of this section;

20 (2) whether there is a practical, economic, and
21 feasible alternative to a subsurface area drip dispersal system
22 reasonably available; and

23 (3) any other factor the commission considers
24 relevant.

25 SECTION 4.23. Section 49.198(a), Water Code, is amended to
26 read as follows:

27 (a) A district may elect to file annual financial reports

1 with the executive director in lieu of the district's compliance
2 with Section 49.191 provided:

3 (1) the district had no bonds or other long-term (more
4 than one year) liabilities outstanding during the fiscal period;

5 (2) the district did not have gross receipts from
6 operations, loans, taxes, or contributions in excess of \$250,000
7 [~~\$100,000~~] during the fiscal period; and

8 (3) the district's cash and temporary investments were
9 not in excess of \$100,000 at any time during the fiscal period.

10 SECTION 4.24. Sections 361.089(a), (e), and (f), Health and
11 Safety Code, are amended to read as follows:

12 (a) The commission may, for good cause, deny or amend a
13 permit it issues or has authority to issue for reasons pertaining to
14 public health, air or water pollution, or land use, or for having a
15 compliance history that is classified as unsatisfactory according
16 to commission standards [~~in the lowest classification~~] under
17 Sections 5.753 and 5.754, Water Code, and rules adopted and
18 procedures developed under those sections.

19 (e) The commission may deny an original or renewal permit if
20 it is found, after notice and hearing, that:

21 (1) the applicant or permit holder has a compliance
22 history that is classified as unsatisfactory according to
23 commission standards [~~in the lowest classification~~] under Sections
24 5.753 and 5.754, Water Code, and rules adopted and procedures
25 developed under those sections;

26 (2) the permit holder or applicant made a false or
27 misleading statement in connection with an original or renewal

1 application, either in the formal application or in any other
2 written instrument relating to the application submitted to the
3 commission, its officers, or its employees;

4 (3) the permit holder or applicant is indebted to the
5 state for fees, payment of penalties, or taxes imposed by this title
6 or by a rule of the commission; or

7 (4) the permit holder or applicant is unable to ensure
8 that the management of the hazardous waste management facility
9 conforms or will conform to this title and the rules of the
10 commission.

11 (f) Before denying a permit under this section, the
12 commission must find:

13 (1) that the applicant or permit holder has a
14 compliance history that is classified as unsatisfactory according
15 to commission standards [~~in the lowest classification~~] under
16 Sections 5.753 and 5.754, Water Code, and rules adopted and
17 procedures developed under those sections; or

18 (2) that the permit holder or applicant is indebted to
19 the state for fees, payment of penalties, or taxes imposed by this
20 title or by a rule of the commission.

21 SECTION 4.25. Section 382.0518, Health and Safety Code, is
22 amended by amending Subsection (c) and adding Subsection (j) to
23 read as follows:

24 (c) In considering the issuance, amendment, or renewal of a
25 permit, the commission may consider the applicant's compliance
26 history in accordance with the method for using [~~evaluating~~]
27 compliance history developed by the commission under Section 5.754,

1 Water Code. In considering an applicant's compliance history under
2 this subsection, the commission shall consider as evidence of
3 compliance information regarding the applicant's implementation of
4 an environmental management system at the facility for which the
5 permit, permit amendment, or permit renewal is sought. In this
6 subsection, "environmental management system" has the meaning
7 assigned by Section 5.127, Water Code.

8 (j) The commission may not issue a permit for a new electric
9 generating facility unless the applicant has submitted an
10 assessment that compares the best available control technologies
11 for a water-cooling technology to the technology proposed for use
12 by the facility.

13 SECTION 4.26. Section 382.056(o), Health and Safety Code,
14 is amended to read as follows:

15 (o) Notwithstanding other provisions of this chapter, the
16 commission may hold a hearing on a permit amendment, modification,
17 or renewal if the commission determines that the application
18 involves a facility for which the applicant's compliance history is
19 classified as unsatisfactory according to commission standards [~~in~~
20 ~~the lowest classification]~~ under Sections 5.753 and 5.754, Water
21 Code, and rules adopted and procedures developed under those
22 sections.

23 SECTION 4.27. Subchapter C, Chapter 382, Health and Safety
24 Code, is amended by adding Section 382.059 to read as follows:

25 Sec. 382.059. HEARING AND DECISION ON PERMIT AMENDMENT
26 APPLICATION OF CERTAIN ELECTRIC GENERATING FACILITIES. (a) This
27 section applies to a permit amendment application submitted to

1 allow an electric generating facility to comply with Section 112 of
2 the federal Clean Air Act (42 U.S.C. Section 7412), including a
3 requirement to use applicable maximum achievable control
4 technology.

5 (b) The commission shall provide an opportunity for a public
6 hearing and the submission of public comment on an application for a
7 permit amendment under this section in the manner provided by
8 Section 382.0561.

9 (c) The commission shall send notice of a decision on an
10 application for a permit amendment under this section in the manner
11 provided by Section 382.0562.

12 (d) A person affected by a decision of the commission to
13 issue or deny a permit amendment may move for rehearing and is
14 entitled to judicial review under Section 382.032.

15 SECTION 4.28. Section 401.110(a), Health and Safety Code,
16 is amended to read as follows:

17 (a) In making a determination whether to grant, deny, amend,
18 renew, revoke, suspend, or restrict a license or registration, the
19 commission may consider an applicant's or license holder's
20 technical competence, financial qualifications, and compliance
21 history under the method for using ~~[evaluation of]~~ compliance
22 history developed by the commission under Section 5.754, Water
23 Code.

24 SECTION 4.29. Section 401.112(a), Health and Safety Code,
25 is amended to read as follows:

26 (a) The commission, in making a licensing decision on a
27 specific license application to process or dispose of low-level

1 radioactive waste from other persons, shall consider:

2 (1) site suitability, geological, hydrological, and
3 meteorological factors, and natural hazards;

4 (2) compatibility with present uses of land near the
5 site;

6 (3) socioeconomic effects on surrounding communities
7 of operation of the licensed activity and of associated
8 transportation of low-level radioactive waste;

9 (4) the need for and alternatives to the proposed
10 activity, including an alternative siting analysis prepared by the
11 applicant;

12 (5) the applicant's qualifications, including:

13 (A) financial and technical qualifications and
14 compliance history under the method for using ~~[evaluation of]~~
15 compliance history developed by the commission under Section 5.754,
16 Water Code, for an application to the commission; and

17 (B) the demonstration of financial
18 qualifications under Section 401.108;

19 (6) background monitoring plans for the proposed site;

20 (7) suitability of facilities associated with the
21 proposed activities;

22 (8) chemical, radiological, and biological
23 characteristics of the low-level radioactive waste and waste
24 classification under Section 401.053;

25 (9) adequate insurance of the applicant to cover
26 potential injury to any property or person, including potential
27 injury from risks relating to transportation;

- 1 (10) training programs for the applicant's employees;
2 (11) a monitoring, record-keeping, and reporting
3 program;
4 (12) spill detection and cleanup plans for the
5 licensed site and related to associated transportation of low-level
6 radioactive waste;
7 (13) decommissioning and postclosure care plans;
8 (14) security plans;
9 (15) worker monitoring and protection plans;
10 (16) emergency plans; and
11 (17) a monitoring program for applicants that includes
12 prelicense and postlicense monitoring of background radioactive
13 and chemical characteristics of the soils, groundwater, and
14 vegetation.

15 SECTION 4.30. (a) Not later than September 1, 2012, the
16 Texas Commission on Environmental Quality by rule shall establish
17 the method for evaluating compliance history as required by Section
18 5.753(a), Water Code, as amended by this article. Until the
19 commission adopts that method, the commission shall continue in
20 effect its current standard for evaluating compliance history.

21 (b) The changes in law made by Sections 7.052 and 13.4151,
22 Water Code, as amended by this article, apply only to a violation
23 that occurs on or after the effective date of this Act. For
24 purposes of this section, a violation occurs before the effective
25 date of this Act if any element of the violation occurs before that
26 date. A violation that occurs before the effective date of this Act
27 is covered by the law in effect on the date the violation occurred,

1 and the former law is continued in effect for that purpose.

2 (c) The change in law made by Section 26.3467(d), Water
3 Code, as added by this article, applies only to a delivery of a
4 regulated substance to a petroleum storage tank made on or after the
5 effective date of this Act.

6 SECTION 4.31. Section 49.198(a), Water Code, as amended by
7 this Act, applies to a district that files its annual financial
8 report on or after the effective date of this Act. A district that
9 files its annual financial report before the effective date of this
10 Act is governed by the law in effect on the date the report is filed,
11 and that law is continued in effect for that purpose.

12 ARTICLE 5. WATER RIGHTS

13 SECTION 5.01. Section 11.002(12), Water Code, is amended to
14 read as follows:

15 (12) "Agriculture" means any of the following
16 activities:

17 (A) cultivating the soil to produce crops for
18 human food, animal feed, or planting seed or for the production of
19 fibers;

20 (B) the practice of floriculture, viticulture,
21 silviculture, and horticulture, including the cultivation of
22 plants in containers or nonsoil media, by a nursery grower;

23 (C) raising, feeding, or keeping animals for
24 breeding purposes or for the production of food or fiber, leather,
25 pelts, or other tangible products having a commercial value;

26 (D) raising or keeping equine animals;

27 (E) wildlife management; [~~and~~]

1 (F) planting cover crops, including cover crops
2 cultivated for transplantation, or leaving land idle for the
3 purpose of participating in any governmental program or normal crop
4 or livestock rotation procedure; and

5 (G) aquaculture, as defined by Section 134.001,
6 Agriculture Code.

7 SECTION 5.02. Section 11.031, Water Code, is amended by
8 adding Subsections (d), (e), and (f) to read as follows:

9 (d) Each person who has a water right issued by the
10 commission or who impounds, diverts, or otherwise uses state water
11 shall maintain water use information required under Subsection (a)
12 on a monthly basis during the months a water rights holder uses
13 permitted water. The person shall make the information available
14 to the commission on the commission's request.

15 (e) Except as provided by Subsection (a), the commission may
16 request information maintained under Subsection (d) only during a
17 drought or other emergency shortage of water or in response to a
18 complaint.

19 (f) Subsection (e) does not affect the authority of a
20 watermaster to obtain water use information under other law.

21 SECTION 5.03. Subchapter B, Chapter 11, Water Code, is
22 amended by adding Section 11.053 to read as follows:

23 Sec. 11.053. EMERGENCY ORDER CONCERNING WATER RIGHTS. (a)
24 During a period of drought or other emergency shortage of water, as
25 defined by commission rule, the executive director by order may
26 require any person or entity that receives or may receive a water
27 transfer under this section to comply with drought management

1 measures adopted by the commission.

2 (b) During a period of drought or other emergency shortage
3 of water, the executive director by order may:

4 (1) temporarily suspend the right of any person who
5 holds a water right to use the water, in accordance with the
6 priority of water rights established by Section 11.027; and

7 (2) adjust the diversion of water by water rights
8 holders to address an imminent hazard to public health.

9 (c) The executive director in ordering a suspension or
10 adjustment under this section shall ensure that an action taken:

11 (1) maximizes the beneficial use of water;

12 (2) minimizes the impact on water rights holders;

13 (3) prevents the waste of water; and

14 (4) to the greatest extent practicable, conforms to
15 the order of preferences established by Section 11.024.

16 (d) The commission shall adopt rules to implement this
17 section, including rules:

18 (1) defining a drought or other emergency shortage of
19 water for purposes of this section;

20 (2) specifying the:

21 (A) conditions under which the executive
22 director may issue an order under this section;

23 (B) terms of an order issued under this section,
24 including the maximum duration of a temporary suspension or
25 adjustment under this section; and

26 (C) procedures for appealing an order issued
27 under this section to the commission; and

1 (3) for drought management measures that may be
2 implemented during times of drought or other emergency shortage of
3 water, as provided in Subsection (a).

4 SECTION 5.04. Subchapter D, Chapter 11, Water Code, is
5 amended by adding Section 11.1273 to read as follows:

6 Sec. 11.1273. ADDITIONAL REQUIREMENT: REVIEW OF AMENDMENTS
7 TO CERTAIN WATER MANAGEMENT PLANS. (a) This section applies only
8 to a water management plan consisting of a reservoir operation plan
9 for the operation of two water supply reservoirs that was
10 originally required by a court order adjudicating the water rights
11 for those reservoirs.

12 (b) Not later than the first anniversary of the date the
13 executive director determines that an application to amend a water
14 management plan is administratively complete, the executive
15 director shall complete a technical review of the plan.

16 (c) If the executive director submits a written request for
17 additional information to the applicant, the applicant shall submit
18 the requested information to the executive director not later than
19 the 30th day after the date the applicant receives the request or
20 not later than the deadline agreed to by the executive director and
21 the applicant, if applicable. The review period required by
22 Subsection (b) for completing the technical review is tolled until
23 the date the executive director receives the requested information
24 from the applicant.

25 (d) The commission shall provide an opportunity for public
26 comment and a public hearing on the application, consistent with
27 the process for other water rights applications.

1 recover costs of operating and maintaining the compact waste
2 disposal facility and a reasonable profit on the operation of that
3 facility;

4 (2) provide an amount necessary to meet future costs
5 of decommissioning, closing, and postclosure maintenance and
6 surveillance of the compact waste disposal facility and the compact
7 waste disposal facility portion of the disposal facility site;

8 (3) provide an amount to fund local public projects
9 under Section 401.244;

10 (4) provide a reasonable rate of return on capital
11 investment in the facilities used for management or disposal of
12 compact waste at the compact waste disposal facility; ~~and~~

13 (5) provide an amount necessary to pay compact waste
14 disposal facility licensing fees, to pay compact waste disposal
15 facility fees set by rule or statute, and to provide security for
16 the compact waste disposal facility as required by the commission
17 under law and commission rules; and

18 (6) provide an amount necessary to support the
19 activities of the Texas Low-Level Radioactive Waste Disposal
20 Compact Commission.

21 SECTION 6.02. Subchapter F, Chapter 401, Health and Safety
22 Code, is amended by adding Section 401.251 to read as follows:

23 Sec. 401.251. LOW-LEVEL RADIOACTIVE WASTE DISPOSAL COMPACT
24 COMMISSION ACCOUNT. (a) The low-level radioactive waste disposal
25 compact commission account is an account in the general revenue
26 fund.

27 (b) The commission shall deposit in the account the portion

1 of the fee collected under Section 401.245 that is calculated to
2 support the activities of the Texas Low-Level Radioactive Waste
3 Disposal Compact Commission as required by Section 4.04(4), Texas
4 Low-Level Radioactive Waste Disposal Compact (Section 403.006 of
5 this code).

6 (c) Money in the account may be appropriated only to support
7 the operations of the Texas Low-Level Radioactive Waste Disposal
8 Compact Commission.

9 SECTION 6.03. Sections 5.701(n) and (p), Water Code, are
10 amended to read as follows:

11 (n)(1) Each provider of potable water or sewer utility
12 service shall collect a regulatory assessment from each retail
13 customer as follows:

14 (A) A public utility as defined in Section 13.002
15 [~~of this code~~] shall collect from each retail customer a regulatory
16 assessment equal to one percent of the charge for retail water or
17 sewer service.

18 (B) A water supply or sewer service corporation
19 as defined in Section 13.002 [~~of this code~~] shall collect from each
20 retail customer a regulatory assessment equal to [~~one-half of~~] one
21 percent of the charge for retail water or sewer service.

22 (C) A district as defined in Section 49.001 [~~of~~
23 ~~this code~~] that provides potable water or sewer utility service to
24 retail customers shall collect from each retail customer a
25 regulatory assessment equal to one-half of one percent of the
26 charge for retail water or sewer service.

27 (2) The regulatory assessment may be listed on the

1 customer's bill as a separate item and shall be collected in
2 addition to other charges for utility services.

3 (3) The [~~commission shall use the~~] assessments
4 collected under this subsection may be appropriated by a rider to
5 the General Appropriations Act to an agency with duties related to
6 water and sewer utility regulation solely to pay costs and expenses
7 incurred by the agency [~~commission~~] in the regulation of districts,
8 water supply or sewer service corporations, and public utilities
9 under Chapter 13[~~, Water Code~~].

10 (4) The commission shall annually use a portion of the
11 assessments to provide on-site technical assistance and training to
12 public utilities, water supply or sewer service corporations, and
13 districts. The commission shall contract with others to provide
14 the services.

15 (5) The commission by rule may establish due dates,
16 collection procedures, and penalties for late payment related to
17 regulatory assessments under this subsection. The executive
18 director shall collect all assessments from the utility service
19 providers.

20 (6) The commission shall assess a penalty against a
21 municipality with a population of more than 1.5 million that does
22 not provide municipal water and sewer services in an annexed area in
23 accordance with Section 43.0565, Local Government Code. A penalty
24 assessed under this paragraph shall be not more than \$1,000 for each
25 day the services are not provided after March 1, 1998, for areas
26 annexed before January 1, 1993, or not provided within 4-1/2 years
27 after the effective date of the annexation for areas annexed on or

1 after January 1, 1993. A penalty collected under this paragraph
2 shall be deposited to the credit of the water resource management
3 account to be used to provide water and sewer service to residents
4 of the city.

5 (7) The regulatory assessment does not apply to water
6 that has not been treated for the purpose of human consumption.

7 (p) Notwithstanding any other law, fees collected for
8 deposit to the water resource management account under the
9 following statutes may be appropriated and used to protect water
10 resources in this state, including assessment of water quality,
11 reasonably related to the activities of any of the persons required
12 to pay a fee under:

13 (1) Subsection (b), to the extent those fees are paid
14 by water districts, and Subsections (e), (f), and (n);

15 (2) ~~[Sections 13.4521 and 13.4522, or~~

16 ~~(3)]~~ Section 54.037(c); or

17 (3) Section 367.010, Health and Safety Code.

18 SECTION 6.04. Subchapter L, Chapter 13, Water Code, is
19 repealed.

20 SECTION 6.05. The changes in law made by Section 5.701,
21 Water Code, as amended by this article, apply only to a fee assessed
22 on or after January 1, 2012. A fee assessed before January 1, 2012,
23 is governed by the law in effect at the time the fee was assessed,
24 and the former law is continued in effect for that purpose.

25 ARTICLE 7. WATER AND SEWER UTILITIES

26 SECTION 7.01. Subchapter E, Chapter 13, Water Code, is
27 amended by adding Section 13.1325 to read as follows:

1 SECTION 8.03. Section 367.007, Health and Safety Code, is
2 amended to read as follows:

3 Sec. 367.007. ADMINISTRATION. (a) ~~[The council is not an~~
4 ~~advisory body to the commission. The commission, at the direction~~
5 ~~of the council, shall implement council decisions.]~~

6 ~~[(b) The council may enter into an interagency contract with~~
7 ~~the commission to provide staff and other administrative support as~~
8 ~~required to improve the quality of wastewater treatment and reduce~~
9 ~~the cost of providing wastewater treatment to consumers.]~~

10 ~~[(c)]~~ The commission ~~[council]~~ may accept grants and
11 donations from other sources to supplement the fees collected under
12 Section 367.010. Grants and donations shall be deposited to the
13 credit of the water resource management ~~[on-site wastewater~~
14 ~~treatment research]~~ account and may be disbursed as the commission
15 ~~[council]~~ directs and in accordance with Section 367.008.

16 (b) ~~[(d)]~~ Administrative and facilities support costs are
17 payable from the water resources management ~~[on-site wastewater~~
18 ~~treatment research]~~ account.

19 ~~[(e) The council may award grants and enter into contracts~~
20 ~~in its own name and on its own behalf.]~~

21 SECTION 8.04. Section 367.008, Health and Safety Code, is
22 amended to read as follows:

23 Sec. 367.008. AWARD OF COMPETITIVE GRANTS. (a) The
24 commission ~~[council]~~ shall establish procedures for awarding
25 competitive grants and disbursing grant money.

26 (b) The commission ~~[council]~~ may award competitive grants
27 to:

1 (1) support applied research and demonstration
2 projects by accredited colleges and universities in this state, by
3 other governmental entities, or by acceptable public or private
4 research centers regarding on-site wastewater treatment technology
5 and systems applicable to this state that are directed toward
6 improving the quality of wastewater treatment and reducing the cost
7 of providing wastewater treatment to consumers; and

8 (2) enhance technology transfer regarding on-site
9 wastewater treatment by using educational courses, seminars,
10 symposia, publications, and other forms of information
11 dissemination.

12 (c) The commission shall seek the advice of relevant experts
13 when choosing research topics, awarding grants, and holding
14 educational conferences associated with activities under this
15 chapter. [~~The council may award grants or make other expenditures~~
16 ~~authorized under this chapter only after the comptroller certifies~~
17 ~~that the on-site wastewater treatment research account contains~~
18 ~~enough money to pay for those expenditures.~~]

19 SECTION 8.05. Section 367.009, Health and Safety Code, is
20 amended to read as follows:

21 Sec. 367.009. APPROPRIATIONS. Money collected and
22 appropriated for the purposes of this chapter shall be disbursed as
23 the commission [~~council~~] directs and in accordance with Section
24 367.008.

25 SECTION 8.06. Section 367.010(d), Health and Safety Code,
26 is amended to read as follows:

27 (d) The fee proceeds shall be deposited to the credit of the

1 water resources management [~~on-site wastewater treatment research~~]
2 account.

3 SECTION 8.07. Sections 367.002, 367.003, 367.004, 367.005,
4 367.006, and 367.011, Health and Safety Code, are repealed.

5 SECTION 8.08. (a) On the effective date of this Act, the
6 Texas Commission on Environmental Quality shall assume the
7 administration of all grants of the On-site Wastewater Treatment
8 Research Council in existence on that date.

9 (b) The Texas Commission on Environmental Quality shall
10 assume all contracts held by the On-site Wastewater Treatment
11 Research Council on the effective date of this Act, including all
12 rights and obligations associated with the contracts.

13 ARTICLE 9. RATE NOTIFICATION

14 SECTION 9.01. Section 13.043(i), Water Code, is amended to
15 read as follows:

16 (i) The governing body of a municipally owned utility or a
17 political subdivision, within 60 [~~30~~] days after the date of a final
18 decision on a rate change, shall provide individual written notice
19 to each ratepayer eligible to appeal who resides outside the
20 boundaries of the municipality or the political subdivision. The
21 notice must include, at a minimum, the effective date of the new
22 rates, the new rates, and the location where additional information
23 on rates can be obtained. The governing body of a municipally owned
24 utility or a political subdivision may provide the notice
25 electronically if the utility or political subdivision has access
26 to a ratepayer's e-mail address.

27 SECTION 9.02. Section 13.187(b), Water Code, is amended to

1 read as follows:

2 (b) A copy of the statement of intent shall be mailed, sent
3 by e-mail, or delivered to the appropriate offices of each affected
4 municipality, and to any other affected persons as required by the
5 regulatory authority's rules.

6 ARTICLE 10. CONTESTED CASE HEARINGS

7 SECTION 10.01. Section 382.056(n), Health and Safety Code,
8 is amended to read as follows:

9 (n) In this subsection, "affected person" has the meaning
10 assigned by Section 5.115, Water Code. Except as provided by
11 Section 382.0561, the commission shall consider a request that the
12 commission reconsider the executive director's decision or hold a
13 public hearing in accordance with the applicable procedures
14 provided by Sections 5.315, 5.316, 5.556, and 5.557, Water Code. In
15 a public hearing or contested case hearing granted in response to an
16 affected person's request under Section 5.556, Water Code,
17 regarding the issuance of a permit under Section 382.0518, a permit
18 renewal under Section 382.055, or a related permit condition, the
19 burden of proof is on the affected person to show that the permit
20 should not be issued or renewed or that a related permit condition
21 should be imposed, modified, or omitted.

22 SECTION 10.02. Section 5.115(b), Water Code, is amended to
23 read as follows:

24 (b) At the time an application for a permit or license under
25 this code is filed with the executive director and is
26 administratively complete, the commission shall give notice of the
27 application to any person who may be affected by the granting of the

1 permit or license. A state agency that receives notice under this
2 subsection may submit comments to the commission in response to the
3 notice but may not contest the issuance of a permit or license by
4 the commission. For the purposes of this subsection, "state
5 agency" does not include a river authority.

6 SECTION 10.03. Sections 5.228(c) and (d), Water Code, are
7 amended to read as follows:

8 (c) The executive director shall [~~may~~] participate as a
9 party in contested case permit hearings before the commission or
10 the State Office of Administrative Hearings to:

11 (1) provide information [~~for the sole purpose of~~
12 ~~providing information~~] to complete the administrative record; and

13 (2) support the executive director's position
14 developed in the underlying proceeding. [~~The commission by rule~~
15 ~~shall specify the factors the executive director must consider in~~
16 ~~determining, case by case, whether to participate as a party in a~~
17 ~~contested case permit hearing. In developing the rules under this~~
18 ~~subsection the commission shall consider, among other factors:~~

19 [~~(1) the technical, legal, and financial capacity of~~
20 ~~the parties to the proceeding,~~

21 [~~(2) whether the parties to the proceeding have~~
22 ~~participated in a previous contested case hearing,~~

23 [~~(3) the complexity of the issues presented, and~~

24 [~~(4) the available resources of commission staff.]~~

25 (d) In a contested case hearing relating to a permit
26 application, the executive director or the executive director's
27 designated representative may not rehabilitate the testimony of a

1 witness unless the witness is a commission employee [~~testifying for~~
2 ~~the sole purpose of providing information to complete the~~
3 ~~administrative record~~].

4 SECTION 10.04. Subchapter H, Chapter 5, Water Code, is
5 amended by adding Sections 5.315 and 5.316 to read as follows:

6 Sec. 5.315. DISCOVERY IN CASES USING PREFILED WRITTEN
7 TESTIMONY. In a contested case hearing delegated by the commission
8 to the State Office of Administrative Hearings that uses prefiled
9 written testimony, all discovery must be completed before the
10 deadline for the submission of that testimony, except for water and
11 sewer ratemaking proceedings.

12 Sec. 5.316. DELEGATED CASES REGARDING PERMIT APPLICATION.
13 In a contested case hearing delegated by the commission to the State
14 Office of Administrative Hearings regarding a permit application,
15 the rules, guidance, and policies in effect at the time the
16 technical review portion of the application process closes are the
17 applicable rules, guidance, and policies for the contested case
18 hearing.

19 SECTION 10.05. Section 5.556, Water Code, is amended by
20 adding Subsection (g) to read as follows:

21 (g) In a contested case hearing regarding the issuance of a
22 permit or specific conditions in a permit, the burden of proof is on
23 the affected person who requested the hearing to show that the
24 permit should not be issued or renewed or that a related permit
25 condition should be imposed, modified, or omitted.

26 SECTION 10.06. Section 5.228(e), Water Code, is repealed.

27 SECTION 10.07. (a) Section 5.115(b), Water Code, as

1 amended by this article, applies only to an application for the
2 issuance, amendment, extension, or renewal of a permit or license
3 that is received by the Texas Commission on Environmental Quality
4 on or after the effective date of this Act. An application that is
5 received before that date is governed by the law in effect at the
6 time the application is received, and the former law is continued in
7 effect for that purpose.

8 (b) The changes in law made by this article apply to a
9 proceeding before the State Office of Administrative Hearings that
10 is pending or filed on or after September 1, 2011.

11 ARTICLE 11. EFFECTIVE DATE

12 SECTION 11.01. This Act takes effect September 1, 2011.